Supreme Court, U.S
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No. 92-1857

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

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Royal Food Products, Inc.

Petitioner

v.

Buckeye Union Insurance Company, et al.,

Respondents

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PETITIONER'S REPLY BRIEF TO BRIEF IN OPPOSITION

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ARGUMENT

I. Questions Presented.

The opposition brief does not adequately address both questions presented for review. The issue of deprivation of the constitutional right to trial is, not surprisingly, neglected. Respondents state that petitioner has already had two days in court. However, when there is reversible error, the number of previous court appearances is rendered meaningless, especially when there has never been a hearing or trial on the merits.

On both occasions, the

respective courts reviewed motions to dismiss with a perfunctory and myopic review of the merits. Thus, a deprivation of petitioner's constitutional right to trial occurred.

Additionally, the Respondents refuse to accept the nature of its actions over a two year period as summarized in Petitioner's second question presented for review, that is "actions over a period of two years by a conspiracy among counsel as directed by their insurance company clients which demonstrate the use of perjury, fraud and other misconduct. . ."

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the plaintiff can prove no set of facts which would entitle him to relief* * * *." However, rather than contending with the appellate decision, the opposition brief focuses on the district court's adjudication of the case. See Opposition brief at 9.

Examination of the appellate decision indicates its complete lack of analysis. Instead of scrutinizing the complicated set of facts alleged by Petitioner, the opinion merely states the relevant legal standards and baldly concludes, with no factual analysis whatsoever, that the pleading

threshold under RICO was not met.

The petitioners ask this Court to reverse the Sixth Circuit which refused or, at least, failed to apply the Fed. R. Civ. P. 12(b)(6) standard correctly. This standard is an extremely stringent one due to its harsh remedy: outright dismissal without any hearing on the merits whatsoever. Absent entirely from the opposition brief is a defense of the Sixth Circuit's reasoning and argument.

A. RICO: Predicate Acts and Existence of Conspiracy.

Respondents, in keeping with the reviewing courts in this case,

continue to ignore the relevant facts alleged by Petitioner which are sufficient to support a cause of action under the RICO statute. This Court has interpreted RICO's "racketeering activity" element broadly. In H.J., Inc. v. Northwestern Bell Telephone Company, 492 U.S. 229, 241 (1989), this Court rejected the "multiple scheme" limitation on RICO's "pattern" requirement because of lack of support in the statutory text or legislative materials. Earlier cases eschew a narrow reading of the legislation as well, emphasizing the RICO statute's use

of "terms and concepts of breadth." Russello v. United States, 464 U.S. 16, 21 (1983); see also Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 497-498 (1985) ("RICO is to be read broadly" in accordance with "Congress' self-consciously expansive language and overall approach").

Specifically, the statute's "conduct or participate" requirement does not require proof that the defendant operated or managed an enterprise for the defendant to be held liable. Interpreted broadly by the courts, "conducts" test may be met "in a

variety of ways." H.J., Inc., 492 U.S. at 241.

Respondents in their opposition brief simply parrot the erroneous conclusions reached by the district court in this case in an attempt to obscure the sum result of their conduct. The opposition brief's prostrations that Petitioner failed to allege any racketeering enterprise or activity cannot be sustained by respondents' mere denial.

Petitioner has set forth in its petition for a writ of certiorari and, initially, in the Complaint, the Response for a More

Definite Statement and the Affidavits of John Bernard sufficient facts to allege the racketeering activity relating to interference with commerce. The facts reveal Buckeye Union's effort to deny Royal Foods proper payment for damage done to the building located at 407 North Grant Avenue. Such actions constitute illegal interference with the insurance procedure which had already taken place and which had inculpated Seasonings for the damage.

B. Sanctions

The Sixth Circuit erred when

it upheld the district court's award of sanctions pursuant to Fed. R. Civ. P. 11. The appellate court failed to overrule the district court's mistaken conclusion that Petitioner did not meet any single aspect of the RICO claim pled. First, the district court unreasonably found that because Petitioner's counsel witnessed most of the allegations of wrongdoing, Petitioner's counsel did not rely on the client for information. This is plainly controverted by the pleadings and evidence offered by Petitioner. As John Bernard's sworn statements unequivocally

state, counsel filed the suit at his direction and based on Bernard's knowledge of the facts as alleged in the complaint.

Additionally, the affidavits underscore that simply because Petitioner's counsel became acquainted with the parties involved in the scheme through the preparation of litigation in no way may serve as a basis for imposing sanctions. The RICO complaint contains allegations of facts ascertained by counsel through the client and was filed in good faith. Therefore, Petitioner asks this court to vacate the Sixth Circuit's

judgment on sanctions.

III. Other Issues.

Petitioner filed its plea for a writ of certiorari in this case on May 21, 1993. According to correspondence received from the respondents, their opposition brief was received by this Court on June 28, 1993, some thirty-eight days after the original submission. Under Supreme Court Rule 15.2, the time period for responding to the petition is thirty days unless enlarged by the Court or a Justice or by the Clerk under Rule 30.2. Petitioner received no notice of

relief under the rule. Therefore, the opposition brief was not timely filed and may be ignored by this Court in its discretion.

On another issue of accuracy, Respondents state "[i]nterestingly, counsel for the petitioner Royal in this action, [sic] is also counsel for Grant Avenue Properties in the state action in the Court of Common Pleas in Franklin County." See Opposition Brief at 6. This is an incorrect statement of fact: Royal Foods' counsel in this action originally filed the state RICO case but, very shortly thereafter, withdrew in favor of Attorney

Joseph Winner who has since litigated the case. This error in Respondents' brief would appear to allow a logical inference that the author of the brief had no prior involvement in any aspect of this case.

CONCLUSION

Devoid of any defense of the Sixth Circuit's opinion, Respondents' opposition brief thereby fails to present this Court with any compelling arguments which would preclude the granting of a writ of certiorari. Recitation of legal standards followed only by

skeletal conclusions as executed by the appellate court cannot serve as a legitimate adjudication of the issues presented in this case. Respondents, through their opposition brief, did no more to analyze the facts and applicable law than did the courts which purported to adjudicate the case.

Even if this Court should deny the writ of certiorari, Petitioner urges alternatively that this Court vacate the decision of the Sixth Circuit and remand the case to the district court for trial.

This Court should not uphold

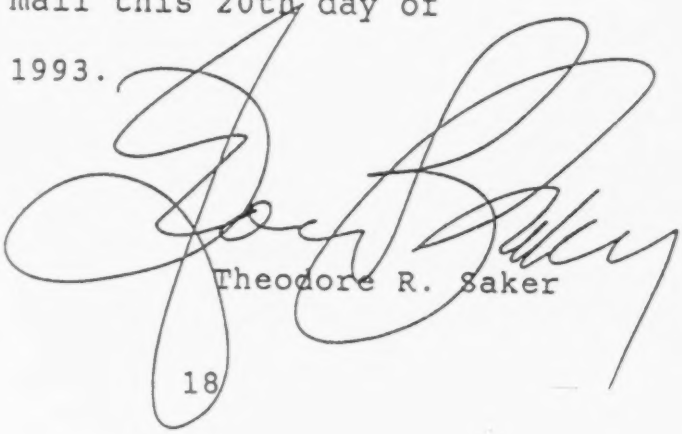
or sanction an appellate decision such as the one presented below: one that is devoid of any legal reasoning or analysis and only gives the most perfunctory review of the case in complete contravention of the 12(b)(6) standard by which it was bound.

Respectfully submitted,

Theodore R. Saker LPA
Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing brief was served upon Charles E. Brown, attorney for Crabbe Brown Schmidt and Jones, 500 S. Front Street, Columbus OH 43215; Theodore R. Munsell, attorney for Lane Alton & Horst, 175 S. Third Street, Columbus OH 43215 and Dennis P. Wirtz, attorney for Wirtz & Kohn, 6500 Busch Blvd, Cols OH 43229, by regular mail this 20th day of August, 1993.



Theodore R. Saker